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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,300	12/08/2003	Jesse R. Miller	14140US02	3626

7590 05/05/2006

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EXAMINER

CORBETT, JOHN M

ART UNIT	PAPER NUMBER
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2882

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/731,300	Applicant(s) MILLER ET AL.	
	Examiner John M. Corbett	Art Unit 2882	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Hodges et al. (4,120,584).

With respect to claim 1, Hodges et al. teaches a sample holder with a plurality of surfaces oriented at nonzero angles relative to one another. (See fig. 3)

With respect to claim 4, Hodges et al. further teaches an x-ray diffraction analysis method of disposing samples on the sample holder and analyzing the samples. (See Col. 1 line 10-19)

2. Claims 2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Mack (3,148,275).

With respect to claim 2, Mack teaches a sample holder with a curved surface suitable for holding samples. (See Fig. 2 and 3 and Col. 2 line 50-62)

With respect to claim 5, Mack further teaches an x-ray diffraction analysis method (See Fig. 1 and Col. 2 lines 21-44) of disposing samples on the sample holder (Col. 2 line 11-14) and analyzing the samples.

3. Claims 3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Schipper (6,111,930).

With respect to claim 3, Schipper teaches a sample holder (3) for x-ray diffraction analysis, said sample holder comprising a frame having a multi-plane surface (plane in parallel to bottom of ring shaped containers (4) and planes formed by mountings (10)) wherein a plurality of removable individual sample holders (4) are disposed within the frame. (Fig. 1)

With respect to claim 6, Schipper further teaches an x-ray diffraction analysis method (See Col. 1 line 10-16) of disposing samples on the sample holder and analyzing the samples. (See Col. 4 line 22 – Col. 5 line 7)

Response to Arguments

4. Applicant's arguments filed 15 February 2006 have been fully considered but they are not persuasive.

With respect to claims 1 and 4, the applicant's argument that the reference (Hodges et al.) fails to show certain features of applicant's invention, it is noted that the features upon which

applicant relies (i.e., “analytical surfaces”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to claims 2 and 5, the Applicant argues, “only a single sample may be analyzed in the Mack sample holder”. The Examiner disagrees. The Examiner contends that the sample holder of Mack is reusable, and therefore, is used to hold multiple samples during its service life.

With respect to claims 3 and 6, the Applicant argues, Schipper does not anticipate claim 3 as amended since the sample holders are not “disposed within a frame having a multi-plane surface”. The Examiner disagrees. The Examiner notes that in addition to the “zero degree” plane noted by the Applicant, items (10) represent additional plane surfaces within the frame. The Examiner, therefore, contends that Schipper does anticipate claims 3 and 6.

In conclusion, the Applicants arguments are not persuasive and all claims remain rejected.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

Art Unit: 2882


MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John M. Corbett whose telephone number is (571) 272-8284. The examiner can normally be reached on M-F 8 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward J. Glick can be reached on (571) 272-2490. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMC 4/28/2006 JMC



EDWARD J. GLICK
SUPERVISORY PATENT EXAMINER

